

last edited, 08-06-08

A CITIZENS GUIDE TO APPEALS (Filing and Maintaining an Appeal)

August, 2008

This is a general outline of the requirements necessary to file, present and defend an appeal to the Maine Supreme Judicial Court, which is called the Law Court when it considers appeals. The document is based on the Maine Rules of Appellate Procedure. Those rules should be consulted in presenting or defending any appeal, as this document only addresses general questions that may arise. The document references sections of the Rules that are important to consult, but does not, itself, constitute legal advice about maintaining an appeal.

COMMON TERMS

The law of appeals has its own language. Knowing a few of the terms is necessary to understanding the appeal process and this document.

An “appeal” is a request to one court, in this case the Law Court, to review the decision of another court, called the “trial court.” In Maine, the trial courts are the Superior Court, the District Court, and the Probate Courts.

The trial court’s “docket sheet” (consisting of “docket entries”) is the list of events that happen in the trial court. The events listed include complaints and motions filed, hearings or trials held, and orders issued.

The person who seeks to change a trial court’s decision and wants to appeal it is the “appellant.” A person who supports and wants to defend the decision is the “appellee.”

A “brief” is a document filed by a party in the appeal that explains what happened in the trial court and why the trial court decision should be overturned (in the case of an appellant’s brief) or “affirmed” (in the case of an appellee’s brief). If a decision is “affirmed,” it does not change.

The “appendix” is a document filed by the appellant that contains the docket sheet, the trial court’s decision and other important parts of the trial court’s file and important parts of any transcript or exhibits in the case.

FILING AND PREPARING AN APPEAL

Every trial court decision that is a final judgment, subject to appeal, will result in a written order signed or initialed by the trial judge. Even a decision stated orally in court at the conclusion of the case will be indicated in a written order. The nature of those orders can vary anywhere from a brief entry with one or two boxes checked and the judge signing or initialing a court form, to a decision of 50 pages or more. Obtain a copy of the written order that constitutes the court's final decision.

An appeal from a decision of the trial court must proceed carefully through the following steps:

(1) Notice of Appeal and Filing Fee. An appeal is initiated by filing, with the clerk's office at the trial court, a notice of appeal and transcript order form. M.R. App. P. 2(a)(1). The notice of appeal must be signed by a party or the party's attorney. A notice of appeal form may be obtained from the trial court clerk. The notice of appeal form and related information may also be obtained through the Maine Judicial Branch website, www.courts.state.me.us or the HelpMELaw website, www.helpmelaw.com. For civil cases, the party filing the appeal must include a brief statement of the issues that the party intends to assert in the appeal. M.R. App. P. 2(a)(2) & 5(b)(2)(A).

No filing fee is required for criminal appeals. A party filing a civil appeal must pay an appeal filing fee indicated in the Court Fees Schedule that appears on the Judicial Branch website. A party who cannot afford to pay the filing fee may seek a waiver of the filing fee by filing with the trial court an application for a fee waiver that is addressed by M.R. Civ. P. 91.

(2) Time Limits. Most appeals must be filed within 21 days after the judge's order is entered in the docket. M.R. App. P. 2(b)(2)(A) (Criminal); M.R. App. P. 2(b)(3) (Civil). [Extradition order appeals must be filed within 7 days. M.R. App. P. 2(b)(2)(B).] Small Claims appeals, which are heard by the Superior Court, must be filed within 30 days. M.R.S.C.P. 11(a)

The entry of the order in the docket may occur on the date of the judge's written or oral decision or shortly thereafter. An appeal is valid even if it is filed before the decision is entered in the docket. M.R. App. P. 2(b)(1). However, an appeal will be dismissed and fail if it is filed after the

time limit. An extension of time to file an appeal may be granted, but only upon a showing of good cause, meaning a good excuse for the filing delay. A request to extend time to file the appeal must be presented to the trial court. M.R. App. P. 2(b)(5). The extension of time may not exceed 21 days from expiration of the original time limit, except in the rare case where the court clerk does not send out a notice of judgment.

(3) Cross-Appeals. Even after one party in a civil case files an appeal, any other party who wishes to argue for some change in the trial court decision must file a cross-appeal. M.R. App. P. 2(c)(3). A cross-appeal must be filed within the time for filing an appeal or within 14 days after the filing of the first notice of appeal, whichever happens last. M.R. App. P. 2(b)(3). When more than one party appeals, the party or parties who filed the first notice of appeal is considered the “appellant,” and the party who filed any subsequent notice of appeal is considered an “appellee,” even though the “appellee” seeks to change the trial court’s decision.

(4) Transcript Preparation Request. In criminal appeals, there is a standard transcript that will be prepared upon a request for a transcript with the filing of an appeal. It includes the testimony of the witnesses at trial, any bench conferences with the judge and, if the case was a jury trial, the judge’s instructions to the jury. M.R. App. P. 5(b)(1). The parties to a criminal appeal may add to or remove portions from the standard transcript by utilizing the court’s transcript order form.

There is no standard transcript in a civil case. If the appeal asserts that the court’s fact-findings are not supported by evidence in the record, a transcript of all or most of the trial proceedings is probably necessary to address these issues. M.R. App. P. 5(b)(2)(A). Where no transcript or an incomplete transcript is provided, the Law Court may assume that the record supports the fact-findings and discretionary choices, including remedies, ordered by the trial court.

After the transcript order is filed with the notice of appeal, the other parties to the appeal have 7 days to designate additional portions of the transcript to be ordered. M.R. App. P. 5(b)(1) & (2)(A). Within 7 days after filing the notice of appeal, the party filing the appeal must make satisfactory arrangements to pay for the ordered transcript. If payment arrangements are not made, the transcript order will be canceled, and the appeal will proceed without a transcript. M.R. App. P. 5(b)(2)(B). Defendants in criminal cases and parties in civil child protective cases who qualify for court-appointed

counsel, and who file the appropriate form to support qualification, may have the transcript on appeal paid as an expense of the court. In circumstances addressed in M.R. Civ. P. 91(f)(2), a tape of a hearing may be utilized instead of a transcript.

(5) Copies of Documents to Other Parties. Copies of the notice of appeal and transcript order form, the briefs, and all other documents filed with any court in connection with an appeal must be served on each other party to the appeal by mailing a copy to that party or the lawyer for a party who is represented by a lawyer. M.R. Civ. P. 5(a); M.R. App. P. 7(c).

(6) The Trial Court Record. Within 21 days after the filing of the notice of appeal, the clerk of the trial court must file the record with the Clerk of the Law Court. M.R. App. P. 6(a). The trial court's record includes the trial court file plus a copy of the docket entries. Generally the record will include trial exhibits that were documents or photographs, but, unless a special request is made, it will not include bulky documents or tangible objects that were exhibits such as voluminous reports, weapons, clothing, or drugs. M.R. App. P. 6(b).

When an appeal to the Law Court involves a challenge to a trial court ruling deciding an appeal from a state or local administrative agency, the record will include the record from the state or local administrative proceeding that was presented to the trial court, plus the record created in the trial court.

(7) The Law Court Briefing Schedule. When the transcript is filed with the Law Court, or when the record is received if no transcript is ordered, the Clerk of the Law Court will send to each party to the appeal a notice stating the dates by which the briefs and the appendix must be filed. M.R. App. P. 7(a). This notice will have on it a Law Court docket number that will be different from any trial court docket number. Only the Law Court docket number should be used in all filings with the Law Court. The brief filing schedule set by M.R. App. P. 7(b) will be stated on the Law Court notice as follows:

(A) The Appellant's Brief must be filed within 35 days after the date that the record and transcript, if any, are filed in the Law Court.

(B) The Appendix, discussed below, must be filed within 14 days after the appellant's brief is filed.

(C) The Appellee's Brief must be filed within 28 days after the appellant's brief is filed.

(D) The Appellant then may file a reply brief within 14 days after the filing of the brief of the appellee.

The notice from the Law Court will give the specific date that the Appellant's brief must be filed. The date when the Appendix and the Appellee's brief must be filed is based on the date that the Appellant's brief is filed.

(8) Preparing, Filing, and Contents of Briefs. The rules for briefs, including directions regarding form, content and organization, appear in M.R. App. P. 9.

A brief may not exceed 50 pages without permission from the Law Court. While the 50-page limit indicates an outside limit, the great bulk of the briefs filed range in length from 10 to 25 pages, with small and about equal numbers coming in below and above that range. The Appellee's brief must follow the same form as the Appellant's brief, but it need not include a statement of the issues or the facts of the case, unless the Appellee wishes to state the issues or facts differently than stated by the Appellant.

An Appellant may file a reply brief limited to addressing new arguments or issues raised in the Appellee's brief. A reply brief may not exceed 20 pages without prior approval. M.R. App. P. 9(c).

Briefs may discuss any source and cite any appropriate authority for the legal arguments made. However, briefs may not discuss facts or attach documents about the facts that are not part of the record that was considered by the trial court.

Maine's major law libraries have copies of briefs from past cases. The major law libraries are the Cleaves Law Library in the Cumberland County Courthouse in Portland, the Maine State Law and Legislative Reference Library in the State House in Augusta, and the University of Maine School of Law Library in Portland.

(9) Distribution of Briefs. Ten copies of each brief must be filed with the Clerk of the Law Court. Additionally, two copies of each brief must be mailed or otherwise delivered to each of the other parties to the appeal who are separately appearing or separately represented. M.R. App. P. 7(c). Thus, if one attorney represents three other parties to the appeal, only two copies of a brief need to be served on that one attorney representing the three parties. However, if the same three parties are each represented by a separate attorney, or if they are each representing themselves, then two copies of a brief must be served on each one of the three parties or their attorneys.

(10) The Appendix to the Briefs. The appendix to the briefs includes copies of important documents from the trial court record to support consideration of the appeal. Except for child protective cases, the appellant is responsible for preparing and filing the appendix to the briefs. M.R. App. P. 8(a). Eight copies of the appendix must be filed no later than fourteen days before the date on which the appellee's brief is due to be filed. M.R. App. P. 8(b). If the appendix consists of 20 pages or fewer, it may be bound with the appellant's brief and thus filed at the same time. M.R. App. P. 8(f). A longer appendix must be bound and filed separately.

Rule 8 requires advance communication between the parties to assure that the appendix includes the materials each party wants to include in the appendix. The rule also specifies the order in which required documents must appear in the appendix. M.R. App. P. 8(g) and (h) specify contents of the appendix that are mandatory for all appeals (subsection (g)), and contents that are mandatory for specific types of appeals (subsection (h)).

(11) Process After Briefing. The parties to the appeal will be notified if the appeal will be considered "on the briefs" or if the parties will appear before the justices to present oral argument. If the appeal is set for consideration on the briefs, the parties do not need to do anything else. If the appeal is set for oral argument, a specific date and time will be set for oral argument of the issues in the appeal.

(12) Oral Argument. At oral argument, the parties are allowed to state their positions and then respond to questions from the justices. Each side is allotted up to 15 minutes for oral argument. M.R. App. P. 11(b). Many appellants divide their time, requesting approximately 12 minutes to present their opening argument and reserving up to 3 minutes for an

opportunity for rebuttal argument after the appellee’s argument is presented. There is no rebuttal time for appellees.

(13) Decision. A decision in an appeal may be published any time from one day up to a year or more after the appeal is considered on the briefs or argued. Many decisions are issued within three months of the date of the Law Court’s initial discussion.

(14) Proceedings After Decision. After the decision on an appeal, the Law Court issues a “mandate.” M.R. App. P. 14(a). When the mandate issues, the case file is returned to the trial court. The trial court resumes authority over the case, either to enforce the terms of any judgment that was affirmed or to proceed as directed by the Law Court in the case of a judgment that was vacated.

In civil cases, the Law Court may also order that costs on the appeal must be paid to the prevailing party by the nonprevailing party. M.R. App. P. 13. Costs do not include attorney fees, but do include items such as the expense of reproducing briefs and the appendix, filing the appeal and other out-of-pocket expenses. Occasionally, where authorized by statute or where the Law Court determines that an appeal was frivolous, the Law Court may order payment of attorney fees or award a sum towards attorney fees on appeal. M.R. App. P. 13(f). Alternatively, and particularly in domestic relations cases, *see* 19-A M.R.S. § 901(6), the Law Court may direct the trial court to decide the appropriate amount of attorney fees, if any, on appeal.

THINGS TO CONSIDER BEFORE APPEALING A DECISION

In considering an appeal, several points are important:

(1) Party Status Required. To appeal, you must have been a “party” to the trial court proceeding—that is, a plaintiff, a defendant, or, occasionally, an intervenor. M.R. App. P. 2(a)(2). Subject to a few exceptions those who were not parties to the trial court proceeding do not have a right to appeal.

(2) The Decision Must Be “Final.” Appeals generally may be taken only from “final” decisions—that is, decisions (also called judgments) that resolve all pending claims leaving nothing else for the trial court to do in the case. Appeals generally are not allowed from interim trial court decisions or rulings that do not finally decide the case. Subject to limited

exceptions, there is no immediate right of appeal from rulings that, for example, (i) admit or exclude evidence, (ii) decide that some claims or issues will be tried while others will not be tried, (iii) resolve a pretrial dispute about discovery, or disclosure of information, or evidence, or (iv) enter an order that is characterized as “preliminary,” “interim,” “temporary,” or is otherwise issued during the course of the proceeding, but before a final decision. Once a final decision is made, a party may appeal any earlier ruling that was properly opposed or objected to at the time. M.R. App. P. 2(b)(4).

(3) Review is Limited to the Record. Decision-making on an appeal is based on the “record” developed in the trial court. M.R. App. P. 5 & 6. Oral testimony, oral arguments, and oral rulings by the judge are part of the record. These oral statements will be considered on appeal if the trial court hearing was recorded and a transcript is prepared and presented to the appellate court on appeal. The party filing the appeal is usually responsible for ordering and paying for the transcript. M.R. App. P. 5(b). The transcript must be ordered when the notice of appeal is filed. M.R. App. P. 2(a)(1). When no transcript is presented, the reviewing court generally will infer that the record would support all fact-findings and discretionary rulings and remedies by the trial court.

(4) No New Trial. An appeal is not a new trial. The appellate court will not consider new testimony, new exhibits, or other material relating to the facts of the case that were not presented to the trial court. Where new facts, new testimony, or new exhibits are discovered for the first time after trial, and could not have been discovered before trial, the appropriate remedy is a motion to the trial court for a new hearing or trial. M.R. Civ. P. 59 & 60(b); M.R. Crim. P. 33.

(5) Objection to Trial Court Ruling Necessary. Most trial court rulings on the facts, on the evidence, or on procedural matters must have been opposed or objected to in the trial court before any challenge to the ruling will be considered on appeal. There is an exception to this rule for what are called “obvious” or “plain” errors, where the trial court makes a ruling that is not correct as a matter of law and the challenged ruling substantially affects personal, property, or liberty rights or the fundamental fairness of the proceeding. M.R. Crim. P. 52(b); M.R. Evid. 103(e). The “obvious error” rule is infrequently applied to overturn a ruling in a criminal case and almost never applied to overturn a ruling in a civil case. Thus,

making a proper objection or argument in the trial court is essential to serious consideration of most claims of error on appeal.

(6) The Filing Fee is Not Refundable. If an appeal is withdrawn or if a party files an appeal that does not meet the requirements of the rules and the appeal is dismissed, the court will not refund the appeal filing fee.

CONCLUSION

The above represents a general outline of the steps through which an appeal proceeds to the Law Court. The points discussed may be subject to exceptions not discussed here to keep this outline general and brief, but such exceptions may become significant in some appeals. Accordingly, the rules and case law governing appeals should be considered carefully as any appeal is prepared and processed.